

REMARKS

Claims 3, 4, 7 and 8 have been withdrawn from consideration by the Examiner. Accordingly, claims 1, 2, 5 and 6 are presently under consideration in the present application.

Claims 1, 2, 5 and 6 have been rejected by the Examiner under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. This rejection is respectfully traversed.

The Examiner has indicated that the expression "crushed mass-type" in claim 1 is unclear. As the Examiner will note, the expression is present in steps 7 and 8 of claim 1, as originally filed. It is clear to one skilled in the art that a candy-type mass can be crushed to provide a crushed mass (please see step 6 of claim 1). Even without a definition, the meaning of the expression is certainly clear to one skilled in the art. In any event, in an effort to comply with the Examiner's rejection, the expression "crushed, mass-type" has been replaced with the originally filed expression "candy-type." Hopefully, this amendment to the claims will eliminate the Examiner's rejection in this regard.

The Examiner has also indicated that the abbreviation "RH" is unclear. Here again, such an abbreviation is well known in the art to refer to "relative humidity." However, for the purposes of clarity, the expression "RH" has been replaced with language "relative humidity."

The Examiner has indicated that it is unclear as to whether the "dissolving, suspending or emulsifying" is required only of the vitamin, or whether the procedure is also optionally applied to sucrose, starch and water. To clarify this situation, a semi-colon has been inserted after vitamins, second occurrence, in line 4 of claim 1 so that it is clear that the Markush group applies to only the vitamins and that sucrose, starch syrup, sodium bicarbonate and carbon dioxide are present together with the vitamin. If this clarification is not considered to be sufficient by the Examiner, the Applicant is open to any other reasonable expression which the Examiner might suggest.

The Examiner has also indicated that claim 1 recites the broad limitation starch syrup and also recites the narrow limitation, maltose syrup, in parenthesis. Since the expression "maltose syrup" has been deleted from claim 1, it is believed that this rejection has been eliminated.

Claims 1, 2, 5 and 6 have been rejected by the Examiner under 35 USC 103(a) as being unpatentable over Pearce et al., U.S. Publication No. 2003/0224090A1, in view of Pearce, U.S. Publication No. 2005/0100648A1, and further in view of Shaft et al., U.S. Patent No. 6,395,321B1. This rejection is respectfully traversed.

The present invention is directed to a carbonated, crushed, mass-type vitamin preparation or a carbonated candy-type vitamin preparation which consists essentially of vitamin, sucrose, starch syrup, for example maltose syrup, sodium bicarbonate and carbon dioxide. The carbonated candy-type vitamin preparation of the present invention is manufactured by following steps 1-8 as recited in claim 1 of the present application. The final form of the preparation bears no resemblance to a film. Thus, the vitamin preparation together with sucrose, starch syrup, sodium bicarbonate and carbon dioxide are mixed together as a whole and is not combined with any films. When placed in the mouth, the preparation is popped out and the active ingredients, including the vitamin, are diffused and dissolved in the mouth very quickly and therefore the effects of the active ingredients are very quickly produced (please see in this regard page 3, lines 5-8 and page 14, lines 20-23 of the present application).

The Pearce et al. reference is directed to snacks for human consumption providing flavor satisfaction and/or craving satisfaction, including snacks that utilize orally soluble edible films with high levels of appealing flavors and/or sweeteners. The use of orally soluble edible film avoids bulk, mess and noise when consumed and/or swallowed and also avoids other disadvantages associated with other known snacks. The Pearce et al. reference also discloses that loud snappy bubbles are obtained by the inclusion of small bits of a gas-releasing agent (gasified candy) in the snack of the orally soluble edible film. The Examiner has taken the

gasified candy separately from the snack of the orally soluble edible film and compared it with the candy-type vitamin preparation of the present invention. However, the gasified candy alone cannot achieve the object of the Pearce et al. invention, which is to avoid bulk, mess or noise when consumed. The Pearce et al. reference teaches that the gasified candy must be inserted into the orally soluble edible film or coated on the film or put between layers of the film (please see page 7, paragraph [0101]; Figs. 13 and 14; and Examples 24-26 of the prior art reference). The Pearce et al. reference also teaches the advantages of combining the gasified candy with a film, as opposed to having the bits of candy sold in a pourable envelope in order to achieve the reduction in messiness and the ability to put a consistent pre-measured amount into the oral cavity (please see page 7, paragraph [0102]). In separating the gasified candy from the soluble, edible film the Examiner has completely reconstructed the teachings of the reference in view of the Applicant's own disclosure. In any event, even if, for sake of argument, it is possible to take the gasified candy separately from the snack or film, the Pearce et al. reference still does not unambiguously teach that the gasified candy per se may contain a vitamin. Thus, a thorough reading of the Pearce et al. reference clearly shows that the prior art reference is concerned with snacks and the messy and sticky nature of snacks and only tangentially refers to the fact that the encapsulated or co-layered material may include a vitamin. Thus, there is no clear teaching that the gasified candy of the Pearce et al. reference contains a vitamin as an essential element.

The Pearce reference, additionally relied upon by the Examiner, is directed to a method for flavoring a food or beverage using three or more balanced flavoring agents. Thus, for example, as disclosed on page 4, paragraph [0040] and Fig. 2 of the prior art reference, a flavored liquid is applied to cereal to enhance flavor. The flavored liquid contains a variety of ingredients, such as raspberry flavor, aspartame, citric acid, ascorbic acid, and the like, to affect the properties of the cereal. However, the flavored liquid of the Pearce reference is completely different from the candy-type vitamin preparation of the present invention which is intended to provide a quick diffusion and dissolution of the active ingredients which include the vitamin. Since the Pearce et al. reference teaches that gasified candy must be inserted into an orally soluble edible film and does not suggest utilizing the gasified candy separately from the snack

and since the Pearce reference does not fill this deficiency but rather merely is concerned with a method for flavoring food or beverages, the combination of these respective references cannot possibly suggest the present invention which is directed to a carbonated candy-type vitamin preparation which is not utilized in conjunction with a snack and which has no relationship to the desirability of merely flavoring foods or beverages.

The Shaft et al. reference which is further relied upon by the Examiner, merely teaches the packaging and enclosing of food items such as candy in a hermetic package. However, as noted in the Shaft reference, the food packages enclosed therein rely upon the heat of the food item to activate a film sealant. Since heat is required to affect the sealing of the package, it is believed that such a package could not be used in the present invention since the vitamin preparation is actually cooled in step 5 of the present claims and thus there would be no heat available to seal the package as suggested in the Shaft reference. Thus, even if it were possible to combine the references as suggested by the Examiner, since the Shaft patent requires the use of heat to achieve hermetic sealing of the package and since the present invention does not provide a heat environment, using the food package of the Shaft package would not be effective in achieving a hermetic sealing of the vitamin that contains the oral soluble films of the Pearce et al. reference.

Accordingly, in view of the above amendments and remarks reconsideration of the rejection and allowance of all of the claims of the present application are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Joseph A. Kolasch Reg. No. 22,463 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Application No. 10/618,818
Amendment dated May 13, 2009
Reply to Office Action of February 19, 2009

Docket No.: 1599-0299PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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